



Washington State Office of Civil Legal Aid

1206 Quince St. SE
Olympia, WA 98504
MS 41183
360-704-4135
360-704-4003 (fax)

James A. Bamberger, Director
jim.bamberger@ocla.wa.gov

To: Civil Legal Aid Oversight Committee

From: Jim Bamberger, Director

Re: Quarterly Report for the Period October – December 2006

Date: December 8, 2006

Pursuant to RCW 2.53.020(3)(c), please find below the written report of the Director of the Office of Civil Legal Aid for the quarter fourth quarter of calendar year 2006. During the present quarter, the Office of Civil Legal Aid:

- Conducted Phase I of the biennial fiscal, regulatory and contractual compliance review of the Northwest Justice Project
- Submitted the OCLA's FY 2008-09 biennial budget and developed appropriate budget language for both the biennial and the FY 2007 supplemental budgets
- Engaged in efforts to position the OCLA budget request for favorable consideration in the upcoming legislative session
- Staffed and continued to manage the statewide case management system procurement process
- Continued to participated on the ATJ Board's State Plan Oversight Committee
- Participated in a contractually required external evaluation of the Alternative Dispute Resolution Program operated by the Washington State Grange pursuant to a contract with the Office of Civil Legal Aid

Each of these areas of activity is discussed below.

1. Biennial fiscal, regulatory and contractual compliance review of the Northwest Justice Project: Phase I

By statute, the Office of Civil Legal Aid (OCLA) has been entrusted with responsibility to administer and oversee the more than \$17 million in taxpayer funds that is appropriated each year for civil legal aid services to eligible low income residents of Washington State. The OCLA contracts with the Northwest Justice Project (NJP) to deliver civil legal aid services to

eligible low income clients throughout the state. This contract is governed by rules, requirements, guidelines and expectations set forth in the following hierarchy of sources:

1. RCW 2.53.030
2. The Contract between OCLA and the Northwest Justice Project
3. The Access to Justice Board's State Plan for the Delivery of Civil Legal Aid in Washington State (incorporated by reference in the Contract between OCLA and NJP)
4. Applicable sources of relevant professional and ethical standards in achieving effective and efficient delivery of civil legal aid services, including the ATJ Board's Civil Equal Justice Performance Standards (1999), the Legal Services Corporation's Performance Criteria (rev. April 2006), the ABA Standards for the Provision of Civil Legal Aid (rev. August 2006) and Washington's Rules of Professional Conduct (rev. 2006).¹

Each biennium, the Office of Civil Legal Aid will conduct a comprehensive review of NJP's performance under the rules relevant to the delivery of state-funded civil legal aid services. The review will consist of two phases. Phase I involves a review of NJP's compliance with applicable statutory and contractual provisions and a detailed assessment of NJP's systems, policies, practices and procedures. This phase also involves a review of NJP's statewide policies, practices and procedures on matters relating to quality and effectiveness of legal aid delivery and adherence to relevant legal, ethical and professional standards. Phase II will involve site visits to CLEAR and selected field offices. OCLA will use these visits to assess and report on the effectiveness of client service delivery strategies, the establishment and strategic implementation of client service delivery priorities, regional planning and coordination and other considerations relevant to ensuring that state funding is being used to fund legal representation that achieves meaningful outcomes for eligible clients on high priority legal matters.

The Phase I review was conducted between October 1 and December 1, 2006. NJP was asked to provide all policies, written guidelines and practices and procedures relevant to its compliance with each and every statutory and contractual requirement. In addition, the review involved a deep review of NJP's timekeeping, cost accounting and allocation, and contract management systems. NJP was asked to produce intake and cost allocation information for 75 randomly selected cases to test the accuracy of its case management system and state-funding eligibility protocols. The goal of the inquiry was to ensure that systems were in place and had sufficient integrity to demonstrate that all costs charged by NJP to OCLA are for direct and indirect expenses related to the delivery of civil legal aid services to eligible clients on matters authorized by RCW 2.53.030 and that no state funds are used directly or indirectly to support activities prohibited by applicable state law.

On December 1, 2006 a final report was issued to NJP. The cover letter and detailed outline of OCLA's areas of inquiry and corresponding findings are attached to this report. In a nutshell, the report finds that:

¹ I am happy to provide copies of these standards or links to web-sources.

- NJP operates in compliance with all applicable requirements of RCW 2.53.030
- NJP's case management, cost accounting, and cost allocation systems and procedures are designed to and do ensure that state funding is used to support only those activities that are authorized under RCW 2.53.030 and the Contract between NJP and OCLA
- NJP has policies and procedures that implement the requirements of RCW 2.53.030 and has systems in place that ensure staff compliance with these policies and procedures.
- Methodologically sound systems are in place to ensure that state funding subcontracted to support the efforts of local volunteer attorneys to provide civil legal aid services to eligible clients on authorized matters is used exclusively for these purposes
- NJP takes seriously its responsibilities under the ATJ Board's State Plan for the Delivery of Civil Legal Aid, and is working both at the statewide and regional levels to support efforts to implement the plan
- NJP has developed and continues to build on a sound and effective client service delivery infrastructure
- NJP is committed and invests substantial resources to ensure that its services are meaningfully relevant and available to all eligible clients despite geographic, cultural, language or other barriers they may experience
- NJP provides services on a geographically proportionate basis
- NJP has systems in place that are designed to promote professional growth and development and individual and organizational accountability to applicable rules, regulations and expectations

In sum, the Office of Civil Legal Aid found the Northwest Justice Project to be an extremely well-run, mission driven organization, with a keen sense of responsibility to the needs of its clients and client communities and a solid commitment to fiscal, regulatory and contractual accountability.

Phase II of the biennial review will be conducted during the first six months of 2006.

2. OCLA Budget Filings and Preparation for the 2007 Legislative Session

The Office of Civil Legal Aid submitted its FY 2007-09 budget request on October 1st. The request is that which was endorsed by the Civil Legal Aid Oversight Committee at its meeting on September 29th, and includes the following components:

- \$507,000 in a maintenance adjustment to address legally binding increases in operating costs that NJP will experience during the biennium (salaries and lease obligations)
- \$4,461,000 in new funding to achieve minimum presence in eight rural regions, enhance geographic proportionality of client services and help underwrite a unified intake, advice and referral system for low income clients in King County

The OCLA has asked that budget proviso language relating to funding of an alternative dispute resolution program for farm workers and farm employers be continued (*see* section 5 below).

The OCLA has also asked that language be included allowing NJP to use a small amount of state funds to provide telephone advice and assistance to senior clients regardless of means. This latter proviso will help NJP fill geographic gaps in its CLEAR*Sr. hotline which resulted from the expiration of a multi-year grant with the federal Administration on Aging.

The November election substantially changed the lay of the legislative landscape here in Olympia. Democrats have very sizeable margins in both the House and the Senate and a number of long-time legislators either retired or lost their seats. Despite these changes, the need for and importance of civil legal aid must continue to be understood and supported by members on both sides of the aisle. Political majorities are fleeting. The justice needs of poor people are enduring. They must be met regardless of the prevailing partisan political winds. Strong bipartisan support was the vision of the Supreme Court's Task Force on Civil Equal Justice and remains the end toward which the Office of Civil Legal Aid intends to work.

Consistent with these thoughts, the OCLA Director has been meeting with key Democratic and Republican legislative members and staff. These meetings offer an opportunity to introduce the Office of Civil Legal Aid and the Oversight Committee, discuss the OCLA's ongoing oversight activities and initiate preliminary discussions about the FY 2007-09 budget request. These meetings are going quite well. Members are interested in the progress that has been made since the publication of the Civil Legal Needs Study, are pleased to learn about the Oversight Committee's work, are surprised and uniformly troubled by the lack of access for low income rural residents, and are generally receptive to the purpose and magnitude of the FY 07-09 budget request.

In addition to meeting with legislative members and staff, I have continued to coordinate with the Governor's budget staff at the Office of Financial Management (OFM) and am meeting with other opinion leaders to secure their support for the FY 07-09 budget request. In a strong showing of bipartisan support, Attorney General Rob McKenna announced his support for the OCLA budget request at the Alliance for Equal Justice's Open House in Seattle.

The Office of Civil Legal Aid does not operate alone in promoting expanded funding for civil legal aid. Its efforts are well supported by the Equal Justice Coalition, the Washington State Bar Association and our Justice in Jeopardy partners -- the Board for Judicial Administration, the Office of Public Defense and Washington State CASA. I coordinate closely and regularly with representatives of these organizations.

3. Case Management System Procurement Efforts

The OCLA continued to underwrite and staff efforts to identify and acquire a common case management system for all state-funded legal aid programs. The objective is to ensure consistent and uniform case intake and outcome tracking and reporting (the accountability objective), and to enhance the efficiency of client service delivery efforts (the business practices objective). The OCLA engaged the services of MTG Management Consultants to assist with the procurement process.

A ten-person Case Management Technical Advisory Group (comprised of program leaders, staff and funders) was established to help define the functional and technical requirements that would be included in a national RFP. An RFP was issued in early October and responses were received in late November.² An Evaluation Team is working with OCLA and MTG to evaluate these responses. We are down to three potential vendors, and anticipate that a decision will be made in the first quarter of 2007. Conversion and roll-out will take place during 2007 and may extend into 2008.

4. State Plan Oversight Committee

I continue to participate on the ATJ Board's State Plan Oversight Committee which is chaired by ATJ Board member, Gregory Dallaire. The SPOC is overseeing the regional planning effort as well as other components of the revised State Plan for which coordination and oversight are contemplated (e.g., training, pro bono support, state support). The SPOC meets in Seattle every three weeks.

5. Alternative Dispute Resolution System Evaluation

In the 2004 supplemental budget (pre-OCLA), the Legislature directed that \$100,000 of the civil legal aid appropriation be used to contract with "a general farm organization with members in every county of the state to develop and administer an alternative dispute resolution system for disputes between farmers and farm workers." The administering agency at the time, the Department of Community, Trade and Economic Development, undertook a competitive process and awarded a contract for the development of an alternative dispute resolution system (ADRS) for farm worker employment disputes to the Washington State Grange. The Grange hired staff and established an ADRS Oversight Board which includes representatives from the Grange, the Washington Growers' League, the Growers Clearinghouse, Northwest Justice Project, Columbia Legal Services, the United Farmworkers of America as well as an at-large farmworker. The agricultural mediation program was brought on line in 2005.

At the request of the Grange and the organizations involved with the ADRS program, the Legislature continued funding for the ADRS through a budget proviso attached to the FY 2005-07 civil legal aid appropriation. The Office of Civil Legal Aid inherited the ADRS contract on July 1, 2005. The contract entered into between OCLA and the Grange required an independent assessment of the effectiveness of the program in relation to the objective of finding prompt, fair and cost-effective solutions to agricultural employment disputes. The Grange retained Deborah Feldman and Associates to conduct this evaluation. A preliminary report was issued and a final report is due shortly.

Ms. Feldman's report indicates that it is too early to assess the overall value and effectiveness of the ADRS program. While demand for services has not been strong in the year and a half it has been up and running, Ms. Feldman observes that this is not unusual for dispute resolution

² I have chosen not to attach the RFP (which includes the functional and technical requirements) but will make it available if Committee members are interested.

programs. She has found few comparable programs against which to evaluate the ADRS experience to date. She suggests a number of changes in marketing, outreach and coordination that, along with the recent hiring of a bilingual/bicultural program administrator, should enhance the potential for program success. In light of findings and recommendations set forth in Ms. Feldman's draft report and recent increases in referral activity resulting from a protocol entered into between the ADRS and the Washington State Human Rights Commission, the Office of Civil Legal Aid has asked the Legislature to continue the budget proviso language for the FY 07-09 biennium.

6. Year End Thoughts

Equal justice under law is not merely a caption on the façade of the Supreme Court building, it is perhaps the most inspiring ideal of our society...it is fundamental that justice should be the same, in substance and availability, without regard to economic status.³

As 2006 comes to a close, I'd like to take a moment to express my thanks for your contributions, thoughtful input, guidance and support. I have been honored to serve as the first Director of the Office of Civil Legal Aid. The Office of Civil Legal Aid is a trustee of appropriated public funds. While we owe a fiduciary to the taxpayers whose funding we administer, we owe an even greater responsibility to the poor and the vulnerable who have a right to the protection of our laws but who, because they either know not of their legal rights or have no means to enforce them, must look to the state-funded legal aid system for help.

The coming years will be ripe with challenges. We are building something special here in our state. Infrastructure has been put into place and the foundation of our state's civil legal aid system is strong. But, as we are reminded by the Civil Legal Needs Study and the daily demands of clients desperate for help with compelling life problems, there is so much more to do. We must be up to the task.

Our constitution and traditions promise that justice will be administered fairly and equally for all. The Office of Civil Legal Aid and the Civil Legal Aid Oversight Committee are the guardians of this promise. We are responsible for ensuring that it becomes "possible for the humblest to invoke the protection of the law, through proper proceedings in the courts, for any invasion of rights by whomsoever attempted" ... for if we don't, "freedom and equality [will] vanish into nothingness."⁴

Best holiday wishes to you and yours.

Jim Bamberger
Director

³ Former U.S. Supreme Court Justice Lewis Powell, Jr.

⁴ Reginald Heber Smith, JUSTICE AND THE POOR (1919).